

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
11/7/03  
★ NOV 05 2003 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BARBARA CALI, on behalf of herself  
and all others similarly situated,

Plaintiff

-against-

RICKENBACKER COLLECTIONS,

Defendants

CLASS ACTION  
COMPLAINT AND DEMAND  
FOR JURY TRIAL

CV 03 5600

(Unlawful Debt  
Collection Practices)

SEYBERT, J.  
WALL, M.J.

I. Preliminary Statement

1. Plaintiff Barbara Cali, on her own behalf and on behalf of the class she seeks to represent, brings this action for illegal practices of Rickenbacker Collections who used false, deceptive, misleading and unfair practices in conjunction with an attempt to collect an alleged debt. Plaintiff alleges that the Defendant has violated the Fair Debt Collection Practices Act, 15 U.S.C. sec. 1692 et. seq. (FDCPA).

II. Jurisdiction

2. Jurisdiction of this Court arises under 15 U.S.C.A. sec. 1692k and 28 U.S.C. Sec. 1331. Venue in this District is appropriate because pertinent events took place here.

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### III. Parties

3. Plaintiff, Barbara Cali, is a natural person residing in Huntington Station, New York.

4. Defendant Rickenbacker Collections ("Defendant") is, upon information and belief, a corporation existing pursuant to the laws of the State of California. The Defendant maintains a principal place of business located at 7568 Monterey Street, Gilroy, California. The Defendant is engaged in the business of collecting debts. The Defendant collects debts incurred, and alleged to be incurred, for personal, family or household purposes.

### IV. Facts Relating To Named Plaintiff

5. That the Plaintiff allegedly incurred a debt to Hooked On Phonics.

6. That said alleged obligation is a "debt" as defined in the FDCPA.

7. That in the attempt to collect said debt the Defendant sent a communication dated September 22, 2003 to the Plaintiff. A copy of said communication is attached hereto as Exhibit "A".

8. That said letter sets forth (in part) "You have failed to respond to our previous notice advising you of the delinquency of

your account. It is our intent to pursue collection of this debt through every means available to us. We extend this opportunity to settle this debt in a friendly manner. You may either send your payment in full to RICKNEBACKER or you must call 800-573-8774 at once."

9. That the top portion of said letter is emblazoned with the words "URGENT NOTICE".

10. That the statements in said letter, as reiterated in paragraph 8 heretofore, coupled with the word "URGENT NOTICE" constitute a false threat that legal action will be commenced against the Plaintiff if she fails to tender payment in the amount of \$119.98 as demanded by the Defendant. However, the creditor set forth therein did not authorize the Defendant to refer to the possibility of the commencement of legal action nor would any legal action be commenced in conjunction with the attempt to collect a de minimis alleged debt in the amount of \$119.98.

11. That the statements in said letter, as reiterated in paragraph 8 heretofore, coupled with the word "URGENT NOTICE" constitutes a false sense of urgency.

12. That the Defendant sets forth an official emblem consisting of a star surrounded by wings which emblem is similar to the emblem used by the United States Air Force.

13. That the emblem set forth in the Defendant's collection letter, as described in paragraph 11 heretofore, is set forth thereon to falsely imply that the Defendant is associated with, vouched for and/or bonded by the federal government of the United States of America.

#### IV. Policies and Practices Complained Of

14. It is the policy and practice of the Defendant to send collection communications to residents of the United States which contain statements and representations which are false, deceptive and misleading.

15. It is the policy and practice of the Defendant to send collection communications to residents of the United States which contain statements which constitute a threat of unintended legal action.

16. It is the policy and practice of the Defendant to send collection communications to residents of the United States which falsely represent that the Defendant is associated with, vouched for and/or bonded by the federal government of the United States of America.

17. It is the policy and practice of the Defendant to use unfair means when sending collection communications to residents of the United States.

VI. Class Allegations

18. This action is brought on behalf of a class consisting of all persons with addresses in the United States of America to whom a collection communication was sent by the Defendant in the form of Exhibit A attached hereto.

19. The class period is one year prior to the filing of the complaint in this action through the present.

20. Plaintiff alleges on information and belief that the class is so numerous that joinder of all members is impractical.

21. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members. The principal issues are whether the Defendant violated the FDCPA by causing collection communications to be sent to residents of the United States which

a) contain false, deceptive and misleading statements and representations;

b) contain statements which are unfair to consumers.

22. The Plaintiff's claims are typical of those of the class members. All are based on the same facts and legal theories.

23. The Plaintiff will fairly and adequately protect the interests of the classes defined herein. He has retained counsel

experienced in handling actions involving unlawful practices under the FDCPA and class actions. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue their action.

24. Certification of a class under Fed. R. Civ. P. 23(b)(2) is appropriate in that the Defendant has acted on grounds generally applicable to the classes defined herein.

#### V. Class Claims for Relief

25. The Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

a. The Defendant violated 15 U.S.C. sec. 1692e by using false, deceptive and misleading representations in an attempt to collect alleged debts.

b. The Defendant violated 15 U.S.C. sec. 1692f by using unfair practices in an attempt to collect alleged debts.

c. The Defendant violated 15 U.S.C. sec. 1692e(5) by threatening unintended action.


d. The Defendant violated 15 U.S.C. sec. 1692e(1) by falsely representing that the Defendant is vouched for, bonded by and affiliated with the federal government of the United States of

America.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and in favor of the class for:

- A. Certification of the classes pursuant to Rule 23(b) (2).
- B. Statutory damages for the Plaintiff pursuant to 15 U.S.C.A. sec. 1692k.
- C. Statutory damages for the class pursuant to 15 U.S.C. sec. 1692k.
- D. Attorney's fees, litigation expenses and costs pursuant to 15 U.S.C.A. sec. 1692k.
- E. Such other and further relief as may be just and proper.

Dated: New York, New York  
October 29, 2003

  
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ROBERT L. ARLEO, ESQ.  
(RA 7506)  
Attorney for the Plaintiff  
225 East 79<sup>th</sup> Street, 2B  
New York, New York 10021  
(212) 517-9967

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury in this action.

A handwritten signature in dark ink, appearing to read "Michael G. White", is written above a horizontal line.

Attorney for Plaintiff

7568 MONTEREY ST.  
GILROY, CA 95020-5826

ADDRESS SERVICE REQUESTED

September 22, 2003

**PLEASE DELIVER TO:**

#BWNFTZF  
#RBC6022670014#  
BARBARA CALI - 602267-0  
116 HILLWOOD DRIVE  
HUNTINGTON STATION NY 11746-1345  
|||||

**URGENT NOTICE**



A NATIONAL COLLECTION AGENCY

7568 MONTEREY ST.  
GILROY, CA 95020-5826

(800) 573-8774

"SE HABLA ESPANOL"

ACCOUNT NO: 602267-0  
AMOUNT DUE: \$119.98  
CREDITOR: HOOKED ON PHONICS  
REFERENCE: INV0000000632611

Dear BARBARA CALI,

You have failed to respond to our previous notice advising you of the delinquency of your account.

It is our intent to pursue collection of this debt through every means available to us.

We extend this opportunity to settle this debt in a friendly manner. You may either send your payment in full to RICKENBACKER or you must call 800-573-8774 at once.

Sincerely,

JENNIFER CARO  
(800)-573-8774 EXT.

You may also pay online by visiting [www.pay-rccs.com](http://www.pay-rccs.com)

This communication is from a collection agency.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

DETACH HERE - RETURN THIS STUB WITH YOUR PAYMENT

Card Type: ( ) VISA

( ) MC

Amount Enclosed: \$

Credit Card#: \_\_\_\_\_

Exp Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Cardholder Name: \_\_\_\_\_

Work Phone: \_\_\_\_\_

RICKENBACKER COLLECTIONS  
7568 MONTEREY ST.  
GILROY, CA 95020-5826

|||||

BARBARA CALI  
116 HILLWOOD DRIVE  
HUNTINGTON STATION NY 11746-1345

**TOTAL DUE: \$119.98**

ACCOUNT NUMBER: 602267-0

Form 310